

MASSAGE THERAPY
Administrative Rules of the Texas Department of Licensing and Regulation
16 Texas Administrative Code, Chapter 117
(Effective November 1, 2017)

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SUBCHAPTER A. GENERAL PROVISIONS.

117.1. Authority. *(New Section adopted effective November 1, 2017, 42 TexReg 4991)*

This chapter is promulgated under the authority of the Texas Occupations Code, Chapter 51 and 455.

117.2. Definitions. *(New Section adopted effective November 1, 2017, 42 TexReg 4991)*

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Act--Texas Occupations Code, Chapter 455, relating to the regulation of massage therapists, massage therapy instructors, massage schools, and massage establishments.
- (2) Anatomy--The study of the structure of the human body including the following areas: bones, joints and muscles, the skin, blood and blood vessels, cells, tissues and membranes, the heart, the brain, spinal cord and nerves, the lymphatic system, the digestive system, the respiratory system, the urinary system, the reproductive system, glands and hormones.
- (3) Business practices and professional ethics--The study of standard bookkeeping and accounting practices, office practices, and advertising, and ethical guidelines for massage therapists established by law or the department.
- (4) Client--An individual or patron seeking or receiving massage therapy services.
- (5) Commission--The Texas Commission on Licensing and Regulation.
- (6) Compensation--Any and all forms of payment as remuneration for the provision of massage therapy or other massage therapy services, including but not limited to, fees, tips, memberships, goods, services, barter, or any other exchange or any value made to or on behalf of a licensee, an unlicensed person, or an unlicensed business. Compensation includes discounted, reduced, or waived student fees for tuition, books, supplies, or other educational expenses.
- (7) Department--The Texas Department of Licensing and Regulation.
- (8) Executive Director --The executive director of the department.
- (9) Health and hygiene--The study of recognized methods of sanitation and cleanliness including prophylaxis or disease prevention as applied to massage therapy services and current knowledge of elements of healthy life styles.
- (10) Hydrotherapy--The use of generally accepted methods of external application of water for its mechanical, thermal, or chemical effect.
- (11) Instructor--A person employed at a licensed massage school who instructs one or more students in any section of the course of instruction, other than massage therapy techniques, manipulation of soft tissue, or the internship.
- (12) Kinesiology--The study of the anatomy, physiology, and mechanics of movement of the human body.
- (13) Licensee--A person or entity licensed under the Act as a massage therapist, massage school, massage therapy instructor, or massage establishment.
- (14) Massage school--An entity that:

- (A) teaches at a minimum the course of instruction required for a massage therapist license;
and
 - (B) has at least two instructors.
- (15) **Massage therapist**--A person who practices or administers massage therapy or other massage services to a client for compensation. The term includes a licensed massage therapist, therapeutic massage practitioner, massage technician, masseur, masseuse, myotherapist, body massager, body rubber, or any derivation of those titles.
 - (16) **Massage therapy**--The manipulation of soft tissue by hand or through a mechanical or electrical apparatus for the purpose of body massage. The term includes effleurage (stroking), petrissage (kneading), tapotement (percussion), compression, vibration, friction, nerve strokes, and Swedish gymnastics. Massage therapy may include the use of oil, lubricant, salt glows, heat lamps, hot and cold packs, or tub, shower, jacuzzi, sauna, steam or cabinet baths. Equivalent terms for massage therapy are massage, therapeutic massage, massage technology, myo-therapy, body massage, body rub, or any derivation of those terms. Massage therapy is a health care service when the massage is for therapeutic purposes. The terms "therapy" and "therapeutic" do not include diagnosis, the treatment of illness or disease, or any service or procedure for which a license to practice medicine, chiropractic, physical therapy, or podiatry is required by law. Massage therapy does not constitute the practice of chiropractic.
 - (17) **Massage therapy educational program**--The minimum 500 hour supervised course of instruction described in the Act, §455.156, required for licensure and provided by a licensed massage school.
 - (18) **Massage therapy establishment**--A place of business that advertises or offers massage therapy or other massage services unless specifically exempted by the Act. The term includes a place of business that advertises or offers any service described by a derivation of the terms "massage therapy" or "other massage services" as defined by the Act.
 - (19) **Massage therapy instructor**--A licensed massage therapist who provides to one or more students instruction approved by the department in massage therapy or manipulation of soft tissue and who holds a license issued by the department as a massage therapy instructor.
 - (20) **Owner**--An owner is, in the case of a massage school or establishment, an individual, a partnership and any partners, a corporation, or any other legal business entity.
 - (21) **Pathology**--The scientific study of the nature of disease and its causes, processes, development, and consequences.
 - (22) **Physiology**--The study of the normal vital processes of the human body including the processes of cells, tissues, and organs including the contractibility of muscle tissue; coordination through the nervous system; digestion; circulatory; reproduction; and secretions.
 - (23) **State approved educational institution**--An institution which is approved by the Texas Education Agency or which is an institution of higher education as defined in the Texas Codes Annotated, Texas Education Code, Chapter 61 or a higher education institution approved by a similar agency in another state.
 - (24) **Swedish gymnastics**--Passive and active joint movements, nonspecific stretches, passive and active exercise, or any combination of these.
 - (25) **Swedish massage therapy techniques**--The manipulation of soft tissue utilizing effleurage (stroking), petrissage (kneading), tapotement (percussion), compression, vibration, friction, nerve stroke, and Swedish gymnastics.

SUBCHAPTER C. LICENSED MASSAGE THERAPIST

117.20. Massage Therapist License--General Requirements and Application. *(New Section adopted effective November 1, 2017, 42 TexReg 4991)*

- (a) To be eligible for a Massage Therapist license an applicant must:
 - (1) submit a completed application on a department-approved form;
 - (2) pay the fee required under §117.100;
 - (3) be at least 18 years of age;
 - (4) submit a transcript(s) of all relevant course work, acceptable to the department;
 - (5) provide proof of successfully passing the required exam;
 - (6) provide proof of successfully passing the jurisprudence exam;
 - (7) successfully pass a criminal history background check performed by the department; and
 - (8) satisfactorily complete massage therapy studies in a minimum 500 hour department approved course at a licensed massage school in which includes at least:
 - (A) 200 hours of massage therapy techniques and theory and the practice of manipulation of soft tissue, with at least 125 hours of Swedish massage therapy techniques;
 - (B) 50 hours of anatomy;
 - (C) 25 hours of physiology;
 - (D) 50 hours of kinesiology;
 - (E) 40 hours of pathology;
 - (F) 20 hours of hydrotherapy;
 - (G) 45 hours of massage therapy laws and rules, business practices and professional ethics;
 - (H) 20 hours of health, hygiene, first aid, universal precautions, and cardiopulmonary resuscitation (CPR); and
 - (I) 50 hour internship program.
- (b) Unless otherwise indicated, an applicant for licensure as a massage therapist must submit all required information and documentation of credentials on department-approved forms.
- (c) If the application is incomplete, the department will send a notice listing any additional materials required to complete the application.
- (d) In the event that a deficiency is present in course work, the applicant may have up to one year to complete additional course work acceptable to the department; otherwise, the application may be voided.

117.21. Massage Therapist License--Reciprocity. *(New Section adopted effective November 1, 2017, 42 TexReg 4991)*

- (a) An applicant from another state must provide documentation that licensure in another state was obtained by

standards substantially equivalent to those of Texas.

- (b) An applicant from another territory or foreign country must provide documents verified by the department or a certified credentialing agency confirming that licensure in the territory or foreign country was obtained by standards substantially equivalent to those of Texas.
- (c) Degrees, certificates, diplomas, and course work received at other institutions, American or foreign, shall be accepted only if such institution is approved by an education agency in that state or country and the curriculum, the accrediting/credentialing body of that state or country, or the course of studies meets the criteria set out by the Act and this subchapter.
- (d) Unless otherwise indicated, an applicant for licensure as a massage therapist must submit all required information and documentation of credentials on department-approved forms as prescribed under §117.20.

117.22. Massage Therapist License--Examination Requirements. *(New Section adopted effective November 1, 2017, 42 TexReg 4991)*

- (a) Unless otherwise indicated, all applicants must:
 - (1) pass a massage therapy examination approved by the department before submitting an application for licensure; and
 - (2) pass the department's jurisprudence examination before a license will be issued.
- (b) Examinations approved by the department must be broadly recognized for licensure purposes by other states that regulate massage therapists.
- (c) Examination results must reflect that the applicant passed the examinations within two years of the application for licensure unless the applicant is currently licensed in another state or jurisdiction and is applying under §117.20.
- (d) A license will not be issued until the department receives acceptable confirmation of passing examination scores.

117.23. Massage Therapist License--Issuance of License. *(New Section adopted effective November 1, 2017, 42 TexReg 4991)*

- (a) Licenses and identification cards issued by the department remain the property of the department, must not be altered in any way, and must be surrendered to the department on demand.
- (b) A license must be displayed in an appropriate and public manner at the business location of the licensed business, or in the primary office or place of employment of the licensed individual. In the absence of a primary office or place of employment, the licensed individual shall carry a current identification card.
- (c) The department will replace a lost, damaged, or destroyed license or identification card upon written request from a licensee and payment of the replacement fee prescribed under §117.100.

117.24. Massage Therapist License Term; Renewals. *(New Section adopted effective November 1, 2017, 42 TexReg 4991)*

- (a) A massage therapist license issued under this chapter is valid for two years.
- (b) To renew a massage therapist license, a licensee must:
 - (1) submit a completed renewal application on a department-approved form;
 - (2) complete all applicable continuing education requirements; and

- (3) submit all applicable fees as prescribed under §117.100.
- (c) On receipt of a renewal application of a license issued under this chapter, the department shall conduct a criminal background check as authorized under §455.1525 of the Occupations Code.
- (d) Each licensee is responsible for renewing the license before the expiration date and shall not be excused from paying late renewal fees.
- (e) A person whose license has expired may not engage in the activities of a massage therapist and may not hold himself or herself out as a massage therapist, imply that he or she has the title of "licensed massage therapist" or "massage therapist", or use "RMT", "LMT", or "MT" or any facsimile of those titles in any manner.

SUBCHAPTER D. CONTINUING EDUCATION

117.30. Massage Therapist Continuing Education--Hours. *(New Section adopted effective November 1, 2017, 42 TexReg 4991)*

- (a) Massage therapist must successfully complete at least twelve hours of approved continuing education per license term.
- (b) One hour of credit will be awarded for each clock hour of attendance at acceptable continuing education activities, except as follows:
 - (1) one semester hour of academic credit will constitute fifteen clock hours of continuing education;
 - (2) one quarter hour of academic credit will constitute ten clock hours of continuing education; and
 - (3) 0.1 continuing education unit will constitute one clock hour of continuing education.
- (c) A clock hour is equal to 50 minutes.

117.31. Massage Therapist -- Approved Continuing Education Courses and Providers. *(New Section adopted effective November 1, 2017, 42 TexReg 4991)*

- (a) Acceptable continuing education includes attendance at and completion of department approved or recognized, institutes, seminars, workshops, state or national conferences, advanced course work, or college and university academic courses that are:
 - (1) directly related to the theory or clinical application of theory pertaining to the practice of massage therapy and the manipulation of soft tissue, massage therapy laws and rules, business practices, professional ethics, anatomy, physiology, hydrotherapy, kinesiology, pathology, or health and hygiene; or
 - (2) first aid and/or CPR, not to exceed six hours total each renewal period; or
 - (3) advanced massage therapy or bodywork techniques acceptable to the department; and
 - (4) designed to increase and enhance professional knowledge, skills, or competence in the practice of massage therapy.
- (b) Continuing education approved or recognized by the department must be developed and presented by qualified persons.
 - (1) Massage therapy techniques and courses involving the manipulation of soft tissue must be taught or presented by a licensed massage therapy instructor. Advanced massage therapy or bodywork

techniques must be taught or presented by persons with licensure, registration, or education in the technique being presented.

- (2) Courses, other than techniques, may be taught or presented by persons with licensure, registration, education or practical experience in the subject being presented. Instructors teaching CPR or First Aid must be certified as CPR instructors or First Aid instructors by:
 - (A) the American Heart Association;
 - (B) the American Red Cross;
 - (C) the National Safety Council; or
 - (D) another provider with curriculum that is in compliance with nationally accepted guidelines established by the above referenced organizations.
- (3) Out-of-state instructors or presenters offering continuing education in Texas on massage therapy techniques or involving the manipulation of soft tissue must:
 - (A) be in compliance with any licensure, registration or certification requirements for massage therapists and massage therapy instructors in the instructor or presenter's home state;
 - (B) be licensed to practice medicine, occupational therapy, chiropractic, athletic training, physical therapy, or nursing; or
 - (C) provide documentation of education or practical experience specific to the continuing education being offered if the instructor or presenter's home state does not have licensure, registration or certification requirements for massage therapists and massage therapy instructors.
- (c) Continuing education which otherwise meets the standards of this section but is offered or presented online or by correspondence is acceptable only if the subject matter is not massage therapy techniques or manipulation of soft tissue.
- (d) The department may approve out-of-state continuing education providers and programs. Continuing education completed out-of-state may be accepted by the department if it is approved by a national board such as the National Certification Board for Therapeutic Massage and Bodywork.
- (e) Additional information regarding the continuing education may be required for departmental review.

117.32. Massage Therapist Continuing Education--Unacceptable Activities. *(New Section adopted effective November 1, 2017, 42 TexReg 4991)*

The department shall not give continuing education credit for:

- (1) education incidental to the regular professional activities of a massage therapist, such as learning occurring from experience or research;
- (2) professional organizational activity, such as serving on committees or councils or as an officer in a professional organization;
- (3) college academic courses which are audited or not taken for credit;
- (4) independent study, except online or correspondence courses in accordance with the acceptable continuing education requirements of this subchapter; or

- (5) any experience which does not comply with the approved continuing education in §117.31.

117.33. Massage Therapist Continuing Education--Records and Audits. *(New Section adopted effective November 1, 2017, 42 TexReg 4991)*

- (a) The department will monitor a licensee's compliance with continuing education requirements by the use of a random audit system. Supporting documentation of participation in continuing education activities need not be submitted unless an audit notice is received informing the licensee that he or she has been selected for a document audit.
- (b) Continuing education supporting documentation includes:
- (1) certificates of attendance or completion;
 - (2) transcripts of academic work or approved course work; or
 - (3) any other documentation acceptable to the department.
- (c) The audit process shall be as follows:
- (1) The department shall select for audit a random sample of license holders for each renewal month. License holders will be notified of the continuing education audit when they receive their renewal documentation.
 - (2) If selected for an audit, the licensee shall submit copies of certificates, transcripts or other documentation satisfactory to the department, verifying the licensee's attendance, participation and completion of the continuing education. All documentation must be provided at the time of renewal.
 - (3) Failure to timely furnish this information or providing false information during the audit process or the renewal process are grounds for disciplinary action against the license holder.
 - (4) A licensee who is selected for continuing education audit may apply for renewal through the online renewal process. However, the license will not be considered renewed until required continuing education documents are approved by the department.
 - (5) Licenses will not be renewed until continuing education requirements have been met.
- (d) Licensees are responsible for maintaining continuing education records for a period of five (5) years.

117.34. Approved Continuing Education Providers--Requirements and Application. *(New Section adopted effective November 1, 2017, 42 TexReg 4991)*

- (a) Continuing education providers may apply for provider approval on department-approved forms and pay the required fee prescribed under §117.100. Approved applications are effective for two years from the date of approval.
- (b) Approved providers of continuing education must comply with all education requirements set out in this subchapter.
- (c) Approved providers of continuing education must maintain attendance records of all continuing education activities for a period of five (5) years.
- (d) Approved providers shall issue a certificate of attendance to each participant in a program. The certificate of attendance shall contain:

- (1) the name of the approved provider and approval number;
 - (2) the name of the participant;
 - (3) the title of the program;
 - (4) the number of credit hours given;
 - (5) the subject(s) included in the program;
 - (6) the date and place of the program; and
 - (7) the signature of the approved provider.
- (e) Continuing education providers must renew the approval before the expiration date by submitting a department-approved application and paying the required fee prescribed under §117.100. Renewed approvals will be issued for a two-year period as determined by the department.
- (f) The department may audit approved providers for compliance with this section.

SUBCHAPTER E. LICENSED MESSAGE THERAPY INSTRUCTORS

117.40. Massage Therapy Instructor--General Requirements and Application. *(New Section adopted effective November 1, 2017, 42 TexReg 4991)*

- (a) A licensed massage therapy instructor shall instruct the 125 hours of Swedish massage therapy, any other instruction in massage techniques or manipulation of soft tissue, and the internship portion of the required course of instruction.
- (b) To qualify for massage therapy instructor license, a person shall:
- (1) be a licensed massage therapist;
 - (2) have a high school diploma, a general equivalence diploma (GED) or a transcript from an accredited college or university showing successful completion of at least twelve (12) semester hours;
 - (3) submit a statement of assurance that the licensee has been engaged in the practice of massage therapy for at least one year and has conducted 500 hours of hands-on experience (does not include internship hours); and
 - (4) complete a 30-hour course on teaching adult learners. Courses attended may include an instructional certification program, a college level course in teaching adult learners, a continuing education course in teaching adult learners, or an advanced program approved by the department in teaching the course of instruction;
 - (5) submit a completed application on a department-approved form; and
 - (6) pay the required fee under §117.100.
- (c) Persons qualified to instruct courses other than massage therapy technique or manipulation of soft tissue courses are not required to hold a massage therapy instructor license. These persons must hold:
- (1) a baccalaureate or higher degree from an accredited college or university that includes:

- (A) satisfactory completion of nine (9) semester hours or twelve (12) quarter hours in subjects related to the subject area to be taught; or
 - (B) a minimum of one year of practical experience within the last ten (10) years in the subject area to be taught; or
- (2) an associate degree from an accredited college, university, or recognized post-secondary institution and must have:
 - (A) a minimum of one year of practical experience within the last ten years in the subject area to be taught and the associate degree must include satisfactory completion of nine (9) semester hours or twelve (12) quarter credit hours in subjects related to the subject area to be taught; or
 - (B) a minimum of two (2) years of practical experience within the last ten (10) years in the subject area to be taught; or
- (3) a high school diploma, GED, or proof of satisfactory completion of relevant subject(s) from a recognized post-secondary institution and practical experience of a minimum of two years within the last ten years in the subject area to be taught.
- (d) Instructors teaching CPR or First Aid must be certified as CPR instructors or First Aid instructors by:
 - (1) the American Heart Association;
 - (2) the American Red Cross;
 - (3) the National Safety Council; or
 - (4) another provider with curriculum that is in compliance with nationally accepted guidelines established by the above referenced organizations.

117.41. Massage Therapy Instructor License Term; Renewals. *(New Section adopted effective November 1, 2017, 42 TexReg 4991)*

- (a) A massage therapy instructor license issued under this chapter is valid for two years.
- (b) To renew a massage therapy instructor license, a licensee must:
 - (1) submit a completed renewal application on a department-approved form; and
 - (2) submit all applicable fees as prescribed under §117.100.

SUBCHAPTER F. LICENSED MASSAGE SCHOOLS

117.50. Massage School License--General Requirements and Application. *(New Section adopted effective November 1, 2017, 42 TexReg 4991)*

- (a) Unless exempt, an individual or entity who provides at a minimum the course of instruction required for licensure to one or more students constitutes a massage therapy educational program and must obtain a massage school license.
- (b) Minimum standards of operation must be maintained by all massage therapy educational programs to ensure educational programs of high quality which will be of benefit to the student, the school, and the public.

- (c) Each applicant for a massage school must submit:
 - (1) a completed application on a department-approved form;
 - (2) supporting documents that shall include:
 - (A) lease agreement;
 - (B) detailed floor plan; and
 - (C) inventory;
 - (3) the financial stability statements or documents as prescribed under §117.56; and
 - (4) the required fee under §117.100.
- (d) The department shall conduct an inspection of a massage school before an educational program begins operation. No massage school may be operated, instruction given, or student solicited or enrolled at any location which has not been approved by the department.
- (e) Each massage school shall maintain each instructional location in accordance with applicable state and local fire codes and regulations.
- (f) The massage school license must be displayed in an appropriate and public manner at the location of the educational program.

117.51. Massage School Locations. *(New Section adopted effective November 1, 2017, 42 TexReg 4991)*

- (a) A massage school license shall be issued for each approved instructional location. Instruction shall not be provided at an additional location until the department has issued a license for the additional location.
- (b) A massage school shall obtain approval for any additional location(s) where the massage therapy educational program will be offered. All policies and curriculum of the original location apply to an additional location(s).
- (c) An application for licensure of an additional location shall include the department-approved application form, fee prescribed under §117.100, and the following documents:
 - (1) lease agreement;
 - (2) detailed floor plan; and
 - (3) inventory.
- (d) Each massage school shall maintain each instructional location in accordance with applicable state and local fire code(s) and regulations.
- (e) The department may approve a massage therapy educational program to begin operation at an additional location prior to inspection if an inspection of the location has been conducted by the department within the preceding ninety (90) days or if the instruction will be conducted at a public facility, such as a hotel, hospital, university, college, etc.
- (f) An application for a change of instructional location of a massage therapy educational program must be filed and approved by the department before the new location is used. Upon approval of a change of instructional location, no course work may be provided at the previous location.

- (g) Any refunds due to students under the cancellation and refund policy in §117.66, must be made before the department will approve an additional location or a change of location.
- (h) The department may issue an emergency approval for a change of instructional location or additional location on the basis of documented circumstances beyond the massage therapy educational program's control (e.g., fire, flood, breach of lease, etc.).
 - (1) All required documents must be submitted before the emergency approval will be considered.
 - (2) All required fees for the change of location or approval of additional location must be submitted to the department within ten (10) days of issuance of the emergency approval unless the new location is only used once.

117.52. Change of Massage School Ownership. *(New Section adopted effective November 1, 2017, 42 TexReg 4991)*

- (a) The license of a massage school may not be sold or transferred to another person or owner.
- (b) The department may consider the addition or deletion of any person defined as an owner as a change in ownership.
- (c) The massage school must notify the department of the change in ownership at least thirty (30) days before the change in ownership to request that the department, in lieu of a full application, accept a partial application. All fees for initial application will apply.
- (d) The department may require submission of a complete application for licensure if:
 - (1) the department has a reasonable basis to believe the change in ownership of the school may significantly affect the massage therapy educational program's continued ability to meet the criteria for approval; or
 - (2) the educational program fails to file notice of the change of ownership at least thirty (30) days before the ownership transfer.
- (e) The department may require a partial application for licensure if the department reasonably believes the change in ownership will not significantly affect the educational program's continued ability to meet the criteria for approval.
- (f) Before a change in ownership of a massage school, the purchaser shall furnish the department with appropriate information to establish financial stability as prescribed under §117.56.
- (g) The purchaser of a massage school shall accept responsibility for all refund liabilities of the previous owner.
- (h) The department may issue a new license, resulting from a change of ownership, without conducting an inspection if an inspection of the facility has been conducted within the previous year and if the new owner verifies that no changes will be made to existing facilities.

117.53. Massage School Equipment and Facility Requirements. *(New Section adopted effective November 1, 2017, 42 TexReg 4991)*

- (a) Each massage therapy education program shall provide adequate equipment in good working order. The equipment required for instruction shall be determined by the program objective(s). The equipment shall be comparable to that commonly found in the practice of massage therapy.
- (b) The equipment and the classroom and laboratory space shall be of sufficient quality and amount to meet the use requirements of the number of current students in class with appropriate seating facilities or work

stations, as demanded by the activity patterns of the program.

- (c) Enrollment shall not exceed the design characteristics of the student workstations.
- (d) The facilities shall meet any state and local ordinances or requirements governing building and safety for the designated use.
- (e) If adequate facilities and equipment are available, the following maximum ratios are recommended for the supervised course of instruction, and may be varied at the discretion of the massage therapy educational program to conform to specific conditions:
 - (1) laboratory--12 tables to 1 instructor and 3 students to 1 table; and
 - (2) classroom--36 students to 1 instructor.

117.54. Massage School Sanitation Requirements. *(New Section adopted effective November 1, 2017, 42 TexReg 4991)*

- (a) Each instructional location shall be maintained in accordance with applicable state and local sanitary or health codes and regulations.
- (b) An instructional location and all fixed equipment shall be:
 - (1) thoroughly cleaned on a routine basis;
 - (2) be rendered free from harmful organisms by the application of an accepted bactericidal agent; and
 - (3) be in good working condition at all times.
- (c) Toilet facilities shall be kept clean and sanitary without offensive odor and in working order at all times. Restrooms shall not be used as storage rooms.
- (d) Each location shall provide hand washing facilities, including hot and cold running water, located near or adjacent to the toilet room or rooms. Hot air blowers or suitable holders for sanitary towels and dispensers for soap shall be provided, and be adequately supplied at all times.
- (e) All trash containers must be emptied daily and kept clean by washing or using plastic liners.
- (f) Disposable sheets, towels, or protectors which cannot be disinfected will be disposed of in a waste receptacle immediately after use.
- (g) Furniture, equipment, and other fixtures shall be of a washable material and kept clean and in good repair. Electrical equipment shall be kept sanitary and safe at all times.
- (h) Clean sheets shall be used on each client.
- (i) Soiled sheets are to be discarded. After a sheet has been used once, it shall be deposited in a partially closed receptacle, container, or basket, and shall not be used again until properly laundered and disinfected.
- (j) Used towels shall be laundered in chlorinated hot water either by regular commercial laundering or by a non-commercial laundering process.
- (k) Oil must be kept in closed containers.
- (l) Each instructional site must have adequate ventilation.

117.55. Massage School Inspections. *(New Section adopted effective November 1, 2017, 42 TexReg 4991)*

- (a) There will be at least one unannounced inspection at the primary instructional location of each massage school and at each additional location every year.
- (b) Other inspections may be performed, announced or unannounced, at the discretion of the department.
- (c) If deficiencies are found, the massage school shall be notified at the end of the inspection of the deficiencies in writing. If deficiencies are not serious or do not raise health and safety concerns, the department shall give the educational program thirty (30) days to correct the deficiencies.

117.56. Massage School Financial Stability--Documents and Requirements. *(New Section adopted effective November 1, 2017, 42 TexReg 4991)*

- (a) Applicants for initial licensure of a massage school shall furnish the department with complete and correct financial statements or documents, sufficient to demonstrate the massage therapy educational program is financially stable and capable of fulfilling its commitments for training.
 - (1) Applicants must submit the following:
 - (A) for a school owned by a sole proprietor, a personal balance sheet reviewed by a certified public accountant or public accountant registered with the Texas State Board of Public Accountancy with notes that disclose the amount of payments for the first five years of operation to meet debt agreements as required by generally accepted accounting principles (GAAP); or
 - (B) for all other ownership structures, a balance sheet consistent with GAAP and generally accepted auditing standards (GAAS) that has been audited and certified by a certified public accountant or public accountant.
 - (2) Additional documents required for initial licensure of a massage school include:
 - (A) a list of the expected operation-related expenses for the first three months of operation of the educational program;
 - (B) a sworn statement signed by the prospective owner affirming the availability of sufficient cash to cover projected expenses, which may include:
 - (i) total salaries, including withholding, unemployment taxes, and any other related expenses or benefits;
 - (ii) lease payments for equipment listed by the name of the equipment;
 - (iii) lease payments for facilities;
 - (iv) accounting, legal, and other specifically identified professional fees;
 - (v) an estimate of other expenses such as advertising, travel, textbooks, office supplies, classroom supplies, printing, telephone, utilities, taxes, and sales commissions; and
 - (C) other evidence deemed appropriate by the department to establish financial stability.
- (b) All financial documents must identify the name of the certified public accountant or public accountant preparing the documents and be in accordance with GAAP.

- (c) A corporate applicant must file a statement from the Comptroller of Public Accounts that its franchise taxes are current, that the corporation is exempt from payment of the franchise tax, or that it is an out-of-state corporation that is not subject to the franchise tax.
- (d) A massage therapy educational program that participates in federal financial aid programs must submit a copy to the department of each audit completed in accordance with reporting requirements of "Government Auditing Standards", the most current edition, issued by the Comptroller General of the United States, at the same time the audit report is submitted to the United States Department of Education.
- (e) Financial statements for the most recent fiscal year are required at the time of renewal.

117.57. Massage School License Renewal. *(New Section adopted effective November 1, 2017, 42 TexReg 4991)*

- (a) The license of a massage school is valid for a two-year period beginning on the date of issuance of the initial license.
- (b) To renew a massage school license, the licensee must submit:
 - (1) the renewal fee prescribed under §117.100;
 - (2) the completed renewal application on a department-approved form;
 - (3) the complete annual financial statements for the most recently completed fiscal year, demonstrating the massage therapy educational program is financially stable and capable of fulfilling its commitments for instruction; and
 - (4) any other information deemed necessary by the department to determine compliance with the Act and this subchapter.
- (c) At least thirty (30) days before the license expiration date, the department shall send a notice of the expiration date and the amount of the renewal fee due. The notice will be mailed to the address in the department's records. Each massage school must file a renewal form in a manner prescribed by the department.
- (d) The department shall issue a renewal license to a massage school once all renewal requirements are met.
- (e) A massage school which operates a massage therapy educational program with an expired license may be subject to disciplinary action. Course hours taught during the time the license is expired will not apply toward the minimum 500-hour course of instruction. For the purpose of establishing the date of late renewal, the postmark date shall be considered the date of mailing.

117.58. Massage School Administrative Personnel. *(New Section adopted effective November 1, 2017, 42 TexReg 4991)*

- (a) Each massage school that operates a massage therapy educational program shall notify the department of the name of the person designated as the director of the educational program. The director is responsible for the educational program, the organization of classes, the maintenance of the physical location and the instructional site(s), the maintenance of proper administrative records and all other procedures related to the administration of the educational program.
- (b) The director shall designate an individual to perform all the functions of, and succeed to, the authority of the named director when the director is unavailable or absent from the educational program. The director shall notify the department of the name of the designated individual.
- (c) The director or his or her designee must be available during scheduled inspections by the department.

117.59. Massage School Curriculum Outline and Internship. *(New Section adopted effective November 1, 2017, 42 TexReg 4991)*

- (a) Each massage school that operates a massage therapy educational program shall follow the curriculum outline prescribed by the department for the minimum 500-hour supervised course of instruction.
- (b) A student must successfully complete the first 250 hours of the supervised course of instruction, including the successful completion of at least 100 hours of massage therapy techniques and theory, before the student is eligible to enter the internship program.
- (c) A classroom hour shall include at least 50 clock minutes of actual classroom time and may include a maximum of 10 minutes of break time. Break time for hours which are taught consecutively in one sitting (i.e., in one evening) may be aggregated into a single break time during those consecutive hours, not to exceed 3 hour blocks of instruction, but not at the end of those hours. The 10 minutes of break time may not be accumulated and used in lieu of lunch or dinner breaks.
- (d) An instructor must be physically present with the student(s) during the classroom hours, including make-up work.
- (e) An internship program must provide a student with a minimum of 40 hours of hands-on massage therapy experience at the location of the student's enrollment. A student enrolled at an additional location shall not be required to travel to another location to complete the internship.
- (f) During the hands-on experience, a massage therapy instructor must be available on the premises of the educational program and be immediately available to the student(s).
- (g) A massage school shall not require a student to advertise for clients or to obtain clients as part of the internship program. At the student's option and with the educational program's permission, a student may obtain clients for the student's hands-on massage therapy experience.
- (h) A massage school must provide all of the minimum 500 hours of the supervised course of instruction at the site where the student enrolled, unless otherwise agreed to by both the student and the massage therapy educational program.
- (i) A massage school shall schedule classes and internship clients so that the students will be able to complete the program during the length of time stipulated in the pre-enrollment information. No evening class may be scheduled to extend beyond a reasonable time.
- (j) Approved internship programs may not exceed 120 hours. Individuals who have completed the required minimum 500-hour supervised course of instruction, including the 50-hour internship, are eligible for examination and licensure. For the purposes of Texas Occupations Code, §455.053(7), 50 hours is the maximum number of hours a student can accumulate in an internship before the student is required to be licensed unless the student is enrolled in a massage school with an internship of up to 120 hours which has been approved by the department in accordance with subsection (m) of this section. No student may complete more than one internship program.
- (k) A massage school shall not allow an unlicensed student to receive any form of compensation for massage therapy or other massage therapy services.
- (l) A massage school shall not allow, authorize, or contract with an unlicensed student enrolled in any course or portion of a course offered by the school to provide massage therapy or other massage therapy services to the public for compensation in excess of the internship approved by the department.
- (m) A massage school shall request and receive approval to offer a course of instruction designed as a massage therapy educational program which exceeds the 500-hour minimum required for licensure and is otherwise conducted in accordance with all rules pertaining to a massage therapy educational program. A massage

school shall not offer a massage therapy educational program which exceeds the 500-hour minimum required for licensure without receiving approval in writing from the department. Such approval shall only be granted by the department if:

- (1) the massage school is accredited by an accrediting body approved by the U.S. Department of Education; or
- (2) the massage school is approved by the department and meets the following requirements:
 - (A) the massage school also offers the 500-hour minimum course of instruction required for licensure concurrently and the student is allowed to choose whether or not to enroll in a program that exceeds the minimum number of hours required for licensure;
 - (B) the massage therapy educational program shall follow the curriculum outline prescribed by the department for the minimum 500 hour supervised course of instruction;
 - (C) all classroom hours in excess of 450 hours are structured to achieve specific educational goals approved by the department which are directly related to one or more of the competencies included in the curriculum approved by the department;
 - (D) all internship hours in excess of 50 hours are structured to achieve specific educational goals approved by the department which are directly related to the clinical application of theory pertaining to the practice of massage therapy and the manipulation of soft tissue;
 - (E) the total number of classroom hours does not exceed 880 hours;
 - (F) the total number of internship hours does not exceed 120 hours;
 - (G) the massage school:
 - (i) provides the student with a department form designed to inform the student that the massage therapy educational program exceeds the minimum number of hours required by law for licensure;
 - (ii) obtains the student's signature on the form before enrollment;
 - (iii) provides a copy of the signed form to the student; and
 - (iv) maintains a copy of the signed form in the student's file; and
 - (H) Failure to comply with this subchapter shall constitute grounds for the department to deny or withdraw approval of programs or to take disciplinary action against a massage school.

117.60. Massage School Advanced Course Work. *(New Section adopted effective November 1, 2017, 42 TexReg 4991)*

- (a) Advanced course work offered by a massage school which is beyond and not a part of the minimum 500 hour course of instruction must be:
 - (1) directly related to the theory or clinical application of theory pertaining to the practice of massage therapy and the manipulation of soft tissue, business practices, professional ethics, massage therapy laws and rules, universal precautions, anatomy, physiology, kinesiology, pathology, hydrotherapy, and health and hygiene; and
 - (2) designed to increase and enhance professional knowledge, skills, or competence in the practice of massage therapy or other massage therapy services.

- (b) A massage school shall not offer advanced course work which authorizes the practice of diagnosis, the treatment of illness or disease, or any service or procedure for which a license to practice medicine, chiropractic, physical therapy or podiatry is required by law.
- (c) Massage schools shall maintain academic transcripts of advanced course work permanently and shall retain all other student records for at least three years from the last date attended for students of advanced course work. Financial records will be retained as required by federal retention requirements, if applicable.
- (d) A massage school may not represent that advanced course work is approved by the department.
- (e) Unlicensed students enrolled in advanced coursework may not provide massage therapy or other massage therapy services to the public.

117.61. Massage School Admission Requirements. *(New Section adopted effective November 1, 2017, 42 TexReg 4991)*

- (a) Each massage school shall submit a copy of its admission requirements for the department's approval. Justification shall be submitted for each of the admission requirements.
- (b) Evidence shall be maintained in each student's file to show that the admission requirements have been met.
- (c) Each massage school must maintain a written record of the previous education and training of a student which meets any portion of the course of instruction required for licensure. The record shall include, if applicable, proof of current CPR and/or First Aid certification from the American Heart Association, American Red Cross, or National Safety Council, or another provider with curriculum that is in compliance with nationally accepted guidelines established by above referenced organizations.
- (d) Official transcripts and documentation of course work obtained at colleges, universities, or out of state institutions must be placed in the student's file along with a copy of the department's written evaluation.
- (e) A massage school may not require a student to take subjects the student has already successfully completed and which meet the requirements for licensure.

117.62. Massage School Enrollment Procedures. *(New Section adopted effective November 1, 2017, 42 TexReg 4991)*

- (a) Before enrollment, each massage school shall provide each prospective student with the following:
 - (1) a program outline;
 - (2) the admission requirements;
 - (3) a schedule of tuition, fees, and other charges;
 - (4) a cancellation and refund policy;
 - (5) the length of time for completion of program, including internship hours;
 - (6) a class schedule including estimated break and meal times;
 - (7) the attendance and progress policies, including requirements and fees for make-up hours;
 - (8) grievance policies;
 - (9) the pupil-teacher ratio;
 - (10) the conduct policy;

- (11) explanations of the difference between a loan and a grant, if the school participates in a loan or grant program;
- (12) a copy of the enrollment agreement;
- (13) a notice that clearly states the number of course hours which must be successfully completed before a student can be licensed as a massage therapist under this chapter;
- (14) a list of instructors, their qualifications, and the subject area taught by each instructor;
- (15) information indicating how a prospective student may obtain copies of the Massage Therapy Act, Texas Occupations Code, Chapter 455 and this chapter; and
- (16) a statement that the Act sets out that a person is ineligible for licensure:
 - (A) if the person has been convicted of, entered a plea of nolo contendere or guilty to, or received deferred adjudication to crimes or offenses involving prostitution or another sexual offense;
 - (B) until the fifth anniversary of the date of a conviction for a misdemeanor involving moral turpitude or a felony; or
 - (C) until the fifth anniversary of the date of a conviction of a violation of the Act.
- (b) Each prospective student shall be given a reasonable time to review the material in subsection (a) and offered the opportunity to tour the instructional facility and inspect equipment before signing an enrollment agreement. The prospective student may decline the tour.
- (c) Each massage school shall use a department-approved acknowledgment form to verify the prospective student's receipt of the information required in subsection (a). A signed copy of the form shall be given to the prospective student and the original shall be maintained in the student's file. The form shall include the following or similar statements:
 - (1) "I have furnished information disclosing my previous education, training, and work experiences. I understand this will be evaluated and may result in the program length being shortened and the cost reduced.";
 - (2) "I further realize that complaints may be made to the Texas Department of Licensing and Regulation, Massage Therapy Program, P.O. Box 12157, Austin, Texas 78711, (512) 539-5600, or www.tdlr.texas.gov.";
 - (3) "I have been offered the opportunity to read the Massage Therapy Act and the rules of the department included in 16 Texas Administrative Code Chapter 117."; and
 - (4) "I have been made aware that the State of Texas requires only the minimum 500 hour course of instruction for licensure as a massage therapist, and anything beyond that is strictly voluntary."
- (d) Each massage therapy educational program shall develop an enrollment agreement which shall be used to enroll each student. The agreement shall include but is not limited to:
 - (1) the full and correct name and location of the massage school, massage therapy educational program, and the massage school director(s) and owner(s);
 - (2) the program title, tuition, fees, reasonable estimated cost of books and supplies, any other expenses, total cost of the program, items subject to cost change, method of payment and payment

- schedule, disclosure statement (if interest is charged on more than three payments), student's right to cancel;
 - (3) the number of classroom and internship hours included in the program;
 - (4) the date the program is to begin, the course length and course schedule;
 - (5) the name and address of the student; and
 - (6) a statement that the student has received a copy of the information in subsection (a) of this section.
- (e) Each student shall be given a copy of his or her executed enrollment agreement and a copy shall be kept in the student's file maintained by the school along with a copy of the acknowledgment form required by subsection (c).

117.63. Massage School Tuition and Fees. *(New Section adopted effective November 1, 2017, 42 TexReg 4991)*

- (a) A massage school shall develop and implement a written policy relating to method(s) of payment available to enrolling students. If student financing is available through any form of arrangement or agreement between the school and a lending institution, the complete terms of the arrangement or agreement must be disclosed in the policy. In addition, if any form of financing is available at or through the school, all charges, the true annual percentage rate and the name(s) and address(es) of the lending institution(s) shall be disclosed in the policy.
- (b) A student shall not be held liable for any tuition, fees, or other charges not disclosed in the policy at the time of enrollment.
- (c) Scholarships may be offered, provided the terms of the scholarships are published and disclosed in the policy.
- (d) Any funds received from, or on behalf of, a student shall be recorded in a format that is current and readily accessible to department representatives. Receipts shall be issued to the student. The funding source and the reason for the charges shall be clearly identified on both the school's record and the receipt.
- (e) A massage school may not allow a student to engage in the unlicensed practice of massage in order to pay for tuition, fees, or other charges associated with the student's massage therapy education.

117.64. Massage School Transcripts and Records. *(New Section adopted effective November 1, 2017, 42 TexReg 4991)*

- (a) Massage schools shall make available for inspection by the department, all records relating to the massage therapy educational program and necessary data required for approval and to show compliance with the Act and this subchapter. A copy of the accreditation authorization and the letter of eligibility from the U.S. Department of Education shall be available for review, if applicable.
- (b) Each massage school shall maintain student transcripts of academic records permanently. Original or certified copies of transcripts (official transcripts) shall be available to students and any person authorized by the student at a reasonable charge if the student has fulfilled the financial obligation to the school. Transcripts must be made available to students who have satisfied the terms of the enrollment agreement within ten (10) calendar days of the date the terms are satisfied. The transcript of a student shall include the following:
 - (1) name and license number of massage therapy educational program;
 - (2) the name of the student;
 - (3) student's social security number;

- (4) student's date of birth;
 - (5) inclusive dates of attendance;
 - (6) list of subjects and number of course hours taken by the student at the massage therapy educational program;
 - (7) dates of courses;
 - (8) address of student;
 - (9) signature of authorized representative of the massage therapy educational program; and
 - (10) pass/fail score.
- (c) Each massage therapy educational program shall retain the following student records for at least three years:
- (1) enrollment agreements and contracts;
 - (2) written record and evaluation of previous education and training on a form provided by the department;
 - (3) official transcript(s) from all previous post-secondary schools attended by the student; and
 - (4) a master student registration list of any person who signs an enrollment agreement, makes a down payment to attend the class, or attends a class. The list must contain:
 - (A) the date of the entry;
 - (B) the name of student;
 - (C) the address of the student including city, state, and zip code;
 - (D) the telephone number of the student with area code;
 - (E) the social security number of the student;
 - (F) the date of birth of the student; and
 - (G) the name and dates of supervised education course work.
- (d) Financial records must be retained as required by federal retention requirements, if applicable.

117.65. Massage School Conduct and Grievance Policy. *(New Section adopted effective November 1, 2017, 42 TexReg 4991)*

- (a) A massage school shall develop and implement a written policy pertaining to the conduct of students. The policy shall include:
 - (1) conditions for dismissal; and
 - (2) conditions for re-entrance of those students dismissed for violating the conduct policy.
- (b) Each massage school shall establish a written grievance policy and procedure that is disclosed to all students at the time of enrollment.

- (c) The grievance policy and procedure shall:
 - (1) attempt to resolve disputes between students, including drops and graduates, and the school or instructor;
 - (2) require that adequate records be maintained of grievances and resolutions;
 - (3) require that every effort to resolve grievances and complaints is made; and
 - (4) prohibit a massage school from disciplining or retaliating against a student for filing a complaint with the department.

117.66. Massage School Cancellation, Refund, and School Closure Policies. *(New Section adopted effective November 1, 2017, 42 TexReg 4991)*

- (a) Each massage school shall develop and implement a cancellation and refund policy which must provide a full refund of all monies paid by a student if:
 - (1) the student cancels the enrollment agreement within 72 hours (until midnight of the third day excluding Saturdays, Sundays, and legal holidays) after the enrollment contract is signed by the prospective student;
 - (2) the enrollment of the student was procured as the result of any misrepresentation in advertising, in promotional materials of the massage therapy educational program or by the owner, the massage school, or massage therapy instructor; or
 - (3) the student was not provided ample opportunity to read the information provided in §117.62.
- (b) The policy must provide for the refund of the unused portion of tuition, fees, and other charges in the event the student, after expiration of the 72-hour cancellation privilege, fails to enter, withdraws from, or is terminated from the program at any time before completion. The policy must provide that:
 - (1) refunds for each program will be based on the program time expressed in clock hours;
 - (2) refunds must be consummated within thirty (30) days after the earliest of:
 - (A) the effective date of termination if the student is terminated;
 - (B) the date of receipt of written notice from the student of withdrawal; or
 - (C) ten (10) instructional days following the first day of the program if the student fails to enter;
 - (3) if tuition is collected in advance of the first day of the program, and if, after expiration of the 72-hour cancellation privilege, the student does not enter the program, not more than \$200 shall be retained by the massage therapy educational program;
 - (4) if a student enters a massage therapy educational program and is terminated or withdraws, the minimum refund of the tuition will be:
 - (A) during the first week or one-tenth of the program, whichever is less, 90% of the remaining tuition;
 - (B) after the first week or one-tenth of the program, whichever is less, but within the first three weeks of the program, 80% of the remaining tuition;

- (C) after the first three weeks of the program, but within the first quarter of the program, 75% of the remaining tuition;
 - (D) during the second quarter of the program, 50% of the remaining tuition;
 - (E) during the third quarter of the program, 10% of the remaining tuition; and
 - (F) during the last quarter of the program, the student may be considered obligated for the full tuition;
- (5) refunds of items of extra expense to the student, such as instructional supplies, books, student activities, laboratory fees, service charges, rentals, deposits, and all other such ancillary miscellaneous charges, where these items are separately stated and shown in the pre-enrollment information, will be made in a reasonable manner;
- (6) if a program is discontinued by the massage school and this prevents the student from completing the program:
 - (A) all tuition and fees paid shall be refunded if the student is not provided with a transcript of all successfully completed hours within thirty (30) days of discontinuance of the program; or
 - (B) in the event an additional or changed location is ten (10) miles or more from the previously approved location of instruction and an enrolled student is unable to complete the program at the additional or changed location as determined by the department:
 - (i) all tuition and fees paid shall be refunded if the student is not provided with a transcript of all successfully completed hours within thirty (30) days of the change of location; or
 - (ii) all unearned tuition and fees shall be refunded if a transcript of all successfully completed hours is provided within thirty (30) days of the change of location; and
- (7) If a student did not meet the admission requirements of a program and the student does not complete the program for any reason, all tuition and fees shall be refunded.
- (c) In all refund computations, leaves of absence, suspensions, school holidays, days when classes are not offered, and summer vacations shall not be counted as part of the elapsed time for purposes of calculating a student's refund.
- (d) A massage therapy educational program is considered to have made a good faith effort to consummate a refund if the student's file contains evidence of the following attempts:
 - (1) certified mail to student's last known address;
 - (2) certified mail to the student's permanent address; and
 - (3) certified mail to the address of the student's parent, if different from the permanent address_and if known.
- (e) If the department determines that the method used to calculate refunds is not in compliance with this section and if the massage school does not provide the correct refund promptly, the school shall submit a report of an audit conducted by a certified public accountant or public accountant of the refunds due former students. The audit report shall be accompanied by a schedule of student refunds due which shall disclose

the following information for the previous four years for each former student:

- (1) the name, address(es), and social security number;
 - (2) the last date of attendance and date of termination;
 - (3) the amount of refund with principal and interest separately stated, date and check number of payment if payment has been made, and any balance due; and
 - (4) the reason for refund.
- (f) The department may take disciplinary action against the license of a massage school for a violation of this section; however, the department has no authority to recover a refund on behalf of a student.
- (g) If a massage school suspends enrollments or closes, the school shall not advertise, solicit, or in any way advise prospective students, either directly or indirectly, of the program offerings.
- (h) If a massage school suspends enrollments or closes, it must give written notice to the department within ten (10) days of the suspension or closure. The department shall be furnished with the names and addresses of any students who were prevented from completion by reason of the discontinuance of the program.

117.67. Massage School Minimum Progress Standards. *(New Section adopted effective November 1, 2017, 42 TexReg 4991)*

- (a) Appropriate standards must be implemented to ascertain the progress of the students enrolled. Each massage school shall have a progress evaluation system of a type and nature to reflect whether the student is making satisfactory progress to the point of being able to complete all subjects within the allotted time provided in the pre-enrollment information.
- (b) The progress evaluation system shall be based on grading periods. A grading period shall not cover more than 25% of the required program hours.
- (c) A student who is making unsatisfactory progress at the end of a grading period shall be placed on probation for the next grading period. If the student on probation achieves satisfactory progress for the subsequent grading period but has not achieved the required grades for overall satisfactory progress, the student may be continued on probation for one more grading period.
- (d) When a student is placed on probation, that student will be counseled before returning to class, and the date, action taken, and terms of the probation shall be clearly indicated on the appropriate permanent records.
- (e) If the student on probation fails to achieve satisfactory progress for the first probationary grading period, the student's enrollment may be terminated.
- (f) The enrollment of a student who fails to achieve overall satisfactory progress for the program at the end of two successive probationary grading periods shall be terminated.
- (g) A student whose enrollment was terminated for unsatisfactory progress may reenter after a minimum of one grading period.
- (h) Refunds shall be made in accordance with the massage school's refund policy. The effective date of termination for purposes of refunds shall be the last day of the last probationary grading period.
- (i) A student who returns after the enrollment was terminated for unsatisfactory progress shall be placed on probation for the next grading period. The student shall be advised of this action and the student's file documented accordingly. If the student does not maintain satisfactory progress during or by the end of this probationary period, the student will be terminated.

117.68. Massage School Attendance Policy. *(New Section adopted effective November 1, 2017, 42 TexReg 4991)*

- (a) Each massage school shall develop and implement a written policy relating to attendance for students enrolled in a massage therapy educational program or any portion of the course of instruction.
- (b) The policy shall include requirements and fees for make-up work.
- (c) An absence shall be charged for a full day when a student attends none of the scheduled classes on that day. A partial day of absence shall be charged for any period of absence during the day.
- (d) School holidays shall not be considered as days of absence.
- (e) The attendance policy shall require the termination of students who accumulate absences of:
 - (1) more than ten (10) consecutive school days; or
 - (2) more than 15% of the total clock hours in a program, or 15% of a portion of the program if a student enrolls in less than the total minimum 500 hours.
- (f) Refunds shall be made in accordance with massage school's refund policy. The effective date of termination for purposes of refunds shall be the last date of absence under subsection (e). A student whose enrollment is terminated for violation of the attendance policy may not reenter before the start of the next grading period.
- (g) A massage school may not start students after 10% of the program has been taught except in those cases where appropriate credit for previous education has been given by the department.
- (h) Make-up work shall not be authorized for the purpose of removing an absence under subsection (e).
- (i) A leave of absence for reasonable purposes acceptable to the massage therapy educational program shall not exceed the lesser of thirty (30) school days or sixty (60) calendar days.
 - (1) A student shall be granted only one leave of absence for each 12-month period.
 - (2) Attendance records shall clearly show the dates for which the leave of absence was granted. A written statement as to why the leave of absence was granted, signed by both the student and the director of the massage therapy educational program indicating approval, shall be placed in the student's file.
 - (3) If the student fails to return from leave, the student will be automatically terminated and a refund made in accordance with the massage school's refund policy. The effective date of termination shall be the last day of the leave of absence.
- (j) Each massage therapy educational program must maintain a master record of attendance which clearly indicates the number of scheduled hours each day and the hours of absence for each student. Entries to the attendance log must indicate whether or not a student was in attendance and must be permanent.

SUBCHAPTER G. LICENSED MASSAGE ESTABLISHMENTS.

117.80. Massage Establishment Application Procedures and Licensure. *(New Section adopted effective November 1, 2017, 42 TexReg 4991)*

- (a) Unless otherwise exempt under the Act, a place of business that advertises or offers massage therapy or other massage services must be licensed by the department as a massage establishment as provided by this section.

- (b) A sexually oriented business may not obtain a license from the department or operate as a massage establishment.
- (c) Each applicant for a massage establishment must submit:
 - (1) a completed application on a department approved form; and
 - (2) the fee as prescribed under §117.100.

117.81. Massage Establishment Renewal Requirements. *(New Section adopted effective November 1, 2017, 42 TexReg 4991)*

- (a) A massage establishment license is valid for a two-year period beginning on the date of issuance of the initial license and must be renewed before the expiration date.
- (b) To renew a massage establishment license, a licensee must submit:
 - (1) the renewal fee prescribed under §117.100;
 - (2) the completed renewal application on a department-approved form; and
 - (3) any other information deemed necessary by the department to determine compliance with the Act and this subchapter.
- (c) The department shall issue a renewal license to a massage establishment that has met all renewal requirements.

117.82. Massage Establishments--General Requirements. *(New Section adopted effective November 1, 2017, 42 TexReg 4991)*

- (a) A massage establishment shall employ or contract with only licensed massage therapists to perform massage therapy or other massage services. Documentation of the employment or contract relationship and verification that the licensed massage therapist is a United States citizen or a legal permanent resident with a valid work permit shall be maintained by the massage establishment and made available during an inspection or investigation. Required documentation for each person providing massage therapy or other massage services shall include:
 - (1) a copy of the current massage therapist license;
 - (2) proof of eligibility to work in the United States; and
 - (3) if an employee, a completed I-9 form, or if under an independent contractor or contract labor agreement, a copy of the contract signed by both the owner or operator and the licensed massage therapist.
- (b) No massage establishment shall be operated until the department has approved and licensed the establishment.
- (c) A massage establishment must maintain separation from rooms used wholly or in part for residential or sleeping purposes by a solid wall or by a wall with a solid door which shall remain locked during business hours.
- (d) A massage establishment must display the license in a prominent location in the establishment where it is available for inspection by the public.
- (e) A license issued by the department is the property of the department and must be surrendered on demand.

- (f) A massage establishment is subject to inspection to verify compliance with the Act and this chapter by authorized personnel of the department at any reasonable time.
 - (1) Massage establishments shall be inspected periodically and as a result of a complaint. These inspections will be performed to determine compliance with the requirements of the Act and this chapter.
 - (2) The department inspector will contact the establishment owner, manager, or their representative upon arrival at the establishment and before proceeding with the inspection.
 - (3) The establishment owner, manager, or their representative shall cooperate with the inspector in the performance of the inspection.
 - (4) Each establishment shall be inspected at least once every two years.
 - (5) Upon completion of the inspection, the owner, manager, or their representative shall be advised in writing of the results. The inspection report will list violations identified during the inspection.
- (g) A massage establishment may not:
 - (1) employ or contract with an individual who is not a United States citizen or a legal permanent resident with a valid work permit;
 - (2) employ a minor unless the minor's parent or legal guardian authorizes in writing the minor's employment by the establishment;
 - (3) allow a nude or partially nude employee to provide massage therapy or other massage services to a customer;
 - (4) allow any individual, including a client, student, license holder, or employee, to engage in sexual contact in the massage establishment;
 - (5) allow any individual, including a student, license holder, or employee, to practice massage therapy in the nude or in clothing designed to arouse or gratify the sexual desire of any individual; or
 - (6) allow an unlicensed student to provide massage therapy or other massage services to the public beyond the department-approved internship.
- (h) A massage establishment shall:
 - (1) properly maintain and secure for each client the initial consultation documents, all session notes, and related billing records; and
 - (2) maintain a current list of all establishment employees and/or contractors at all times which includes:
 - (A) full name; and
 - (B) license number and expiration date (if licensed as a massage therapist).
- (i) For purposes of this section:
 - (1) "Nude" means a person who is:
 - (A) entirely unclothed; or

- (B) clothed in a manner that leaves uncovered or visible through less than fully opaque clothing any portion of the breasts below the top of the areola of the breasts or any portion of the genitals or buttocks.
- (2) "Sexual contact" includes:
 - (A) any touching of any part of the genitalia or anus;
 - (B) any touching of the breasts of a female client, unless the touching is breast massage that is specifically authorized by the client through the signed consultation document referenced in §117.91;
 - (C) any offer or agreement to engage in any activity described in subparagraph (A) or (B);
 - (D) kissing;
 - (E) deviate sexual intercourse, sexual contact, sexual intercourse, indecent exposure, sexual assault, prostitution, and promotions of prostitution as described in Penal Code, Chapters 21, 22, and 43, or any offer or agreement to engage in such activities;
 - (F) any behavior, gesture, or expression that may reasonably be interpreted as inappropriately seductive or sexual; or
 - (G) inappropriate sexual comments about or to a client, including sexual comments about a person's body.

117.83. Sanitation Requirements for Massage Establishments. *(New Section adopted effective November 1, 2017, 42 TexReg 4991)*

- (a) Each massage establishment shall be maintained in accordance with applicable state and local sanitary or health codes and regulations.
- (b) A massage establishment and all fixed equipment shall:
 - (1) be thoroughly cleaned on a routine basis;
 - (2) be rendered free from harmful organisms by the application of an accepted bactericidal agent; and
 - (3) be in good working condition at all times.
- (c) Toilet facilities shall be kept clean, sanitary, and in working order at all times. Restrooms shall not be used as storage rooms.
- (d) Each location shall provide hand washing facilities, including hot and cold running water, located near or adjacent to the toilet room or rooms. Hot air blowers or suitable holders for sanitary towels and dispensers for soap shall be provided, and be adequately supplied at all times.
- (e) All trash containers must be emptied daily and kept clean by washing or using plastic liners.
- (f) Disposable sheets, towels, or protectors which cannot be disinfected will be disposed of in a waste receptacle immediately after use.
- (g) Furniture, equipment, and other fixtures shall be of a washable material and kept clean and in good repair. Electrical equipment shall be kept sanitary and safe at all times.
- (h) Clean sheets shall be used on each client.

- (i) Soiled sheets are to be discarded. After a sheet has been used once, it shall be deposited in a closed or partially closed receptacle, container, or basket, and shall not be used again until properly washed and disinfected.
- (j) Used towels shall be washed in chlorinated hot water.
- (k) Oil must be kept in closed containers.

117.84. Massage Establishment Exemptions. *(New Section adopted effective November 1, 2017, 42 TexReg 4991)*

- (a) A place of business is not required to hold a massage establishment license under the Act if:
 - (1) the place of business is owned by the federal government, the state, or a political subdivision of the state;
 - (2) at the place of business, a licensed massage therapist practices as a solo practitioner and:
 - (A) does not use a business name or assumed name; or
 - (B) uses a business name or an assumed name and provides the massage therapist's full legal name or license number in each advertisement and each time the business name or assumed name appears in writing;
 - (3) at the place of business, an acupuncturist, athletic trainer, chiropractor, cosmetologist, midwife, nurse, occupational therapist, perfusionist, physical therapist, physician, physician assistant, podiatrist, respiratory care practitioner, or surgical assistant licensed or certified in this state employs or contracts with a licensed massage therapist to provide massage therapy as part of the person's practice; or
 - (4) at the place of business, a person offers to perform or performs massage therapy:
 - (A) for not more than 72 hours in any six-month period; and
 - (B) as part of a public or charity event, the primary purpose of which is not to provide massage therapy.
- (b) Unless the person is exempt from the licensing requirement, a person may not represent that the person is a massage establishment unless the person holds an appropriate license under this subchapter.

117.85. Massage Establishment Change of Ownership or Change of Location. *(New Section adopted effective November 1, 2017, 42 TexReg 4991)*

- (a) No massage establishment license shall be transferred, bartered, or sold to another person or owner. The new owner of a massage establishment must apply for a license as a new applicant. A massage establishment may not operate under a new owner until a massage establishment license is issued by the department to the new owner. A license issued under this chapter is not transferable.
- (b) The department may consider the addition or deletion of any person defined as an owner as a change in ownership. The massage establishment must notify the department of the change in ownership within thirty (30) days before the change in ownership to request that the department, in lieu of a full application, accept a partial application.
- (c) The department may require submission of a full application for approval for a change in ownership if:
 - (1) the department has a reasonable basis to believe the change in ownership of the establishment may

- significantly affect the establishment's continued ability to meet the criteria for approval; or
- (2) the establishment fails to file notice of the change of ownership within thirty (30) days of the ownership transfer.
 - (d) The department may require a partial application for approval for a change in ownership if the department reasonably believes the change in ownership will not significantly affect the establishment's continued ability to meet the criteria for approval.
 - (e) No massage establishment license shall be transferred to another location. If the location of an establishment changes, a new application for licensure must be submitted and approved before the establishment may provide massage therapy or other massage therapy services.

SUBCHAPTER H. RESPONSIBILITIES OF THE LICENSEE AND CODE OF ETHICS.

117.90. General Ethical Requirements. *(New Section adopted effective November 1, 2017, 42 TexReg 4991)*

- (a) A licensee shall not make deceptive, untrue, or fraudulent representations in the practice of massage therapy or employ a trick or scheme in the practice of massage therapy, including, but not limited to, warranty of results of such services and false claims of proficiency in any field.
- (b) A licensee shall not use a work area, equipment or clothing that is unclean or unsanitary.
- (c) A licensee shall not practice massage therapy fraudulently, with gross incompetence, with gross negligence on a particular occasion, or with negligence or incompetence on more than one occasion.
- (d) A licensee shall bill clients or third parties only for those services actually rendered or as agreed to by mutual understanding at the beginning of services or as later modified by mutual agreement.
- (e) A licensee must either honor an unexpired gift certificate issued by that licensee or provide a full refund.
- (f) For each client, a licensee shall keep accurate records of the dates of massage therapy services, types of massage therapy and billing information. Such records must be maintained for a minimum of two years.
- (g) A licensee must obtain the written consent of a parent or guardian to provide massage therapy services to a person under the age of 17.
- (h) On the written request of a client, a client's guardian, or a client's parent if the client is under the age of 17, a licensee shall provide a written explanation of the charges for massage therapy services previously made on a bill or statement of the client. This requirement applies even if the charges are to be paid by a third party.
- (i) A licensee shall not abuse alcohol or drugs in any manner which detrimentally affects the provision of massage therapy or massage therapy instruction.
- (j) A licensee may not overcharge or over treat a client.
- (k) A licensee shall not practice in an unlicensed massage establishment or massage school.
- (l) A licensee shall not allow an unlicensed person to engage in activity for which licensure is required.
- (m) A licensee shall not provide false information on material submitted to the department.
- (n) A licensee shall not interfere with a department investigation by the willful misrepresentation of facts to the department or its authorized representative, or by the use of threats, retaliation, or harassment against any person.

- (o) A licensee shall comply with any formal order issued by the department relating to the licensee.
- (p) A licensee shall be subject to disciplinary action by the department if the licensee is issued a public letter of reprimand, is assessed a civil penalty by a court, or has an administrative penalty imposed by the attorney general's office under the Texas Code of Criminal Procedure, Chapter 56, Subchapter B.
- (q) A licensee shall notify each client of the name, mailing address, telephone number, and web address of the department for the purpose of directing complaints to the department by providing notification:
 - (1) on each written contract for services of a licensee;
 - (2) on a sign prominently displayed in the primary place of business of each licensee;
 - (3) on a bill for service provided by a licensee to a client or third party; or
 - (4) by another written and documented method.
- (r) A licensee shall keep his or her licensure file updated by notifying the department, in writing, of changes of names, address, telephone number and employment.
- (s) A licensee shall be subject to disciplinary action for failure to truthfully respond in a manner that fully discloses all information in an honest, materially responsive, and timely manner to a complaint filed with or by the department.
- (t) A licensee shall not make any false, misleading, deceptive, fraudulent, or exaggerated claim or statement about the licensee's services, including, but not limited to:
 - (1) the effectiveness of services;
 - (2) the licensee's qualifications, capabilities, background, training, experience, education, certification or licensure, professional affiliations, fees, products, or publications; or
 - (3) the practice or field of massage therapy.

117.91. Consultation Document. *(New Section adopted effective November 1, 2017, 42 TexReg 4991)*

- (a) A licensee shall provide an initial consultation to each client before the first massage therapy session and obtain the signature of the client on the consultation document. The consultation document shall include:
 - (1) the type of massage therapy services or techniques the licensee anticipates using during the massage therapy session;
 - (2) the parts of the client's body that will be massaged or the areas of the client's body that will be avoided during the session, including indications and contraindications;
 - (3) a statement that the licensee shall not engage in breast massage of female clients without the written consent of the client;
 - (4) a statement that draping will be used during the session, unless otherwise agreed to in writing by both the client and the licensee;
 - (5) a statement that if uncomfortable for any reason, the client may ask the licensee to cease the massage and the licensee will end the massage session; and
 - (6) the signature of both the client and the licensee.

- (b) If the client's reason for seeking massage therapy changes at any time and any of the information in subsection (a)(1) - (4), is modified, the licensee must provide an updated consultation reflecting any changes and modifications to the techniques used or the parts of the client's body to be massaged.

117.92. Sexual Misconduct. *(New Section adopted effective November 1, 2017, 42 TexReg 4991)*

- (a) A licensee shall not engage in sexual contact during a session with a client. For the purposes of this section, sexual contact includes:
 - (1) any touching of any part of the genitalia or anus;
 - (2) any touching of the breasts of a female client, unless the touching is breast massage that is specifically authorized by the client through the signed consultation document referenced in §117.91;
 - (3) any offer or agreement to engage in any activity described in paragraph (1) or (2);
 - (4) kissing;
 - (5) deviate sexual intercourse, sexual contact, sexual intercourse, indecent exposure, sexual assault, prostitution, and promotion of prostitution as described in the Texas Penal Code, Chapters 21, 22, and 43, or any offer or agreement to engage in any such activities;
 - (6) any behavior, gestures, or expressions which may reasonably be interpreted as inappropriately seductive or sexual; or
 - (7) inappropriate sexual comments about or to a client, including making sexual comments about a person's body.
- (b) A licensee shall not allow any individual, including a client, student, licensee, employee, participant in a continuing education program, or one's self to engage in sexual contact on the premises of any massage school, massage establishment, or the licensee's own place of business.
- (c) A licensee shall not allow any individual, including a student, licensee, employee, or one's self to practice massage therapy or provide other massage therapy services in the nude, while partially nude, or in clothing designed to arouse or gratify the sexual desire of any individual.
- (d) A licensee shall not perform massage therapy, whether or not for compensation, at or for a sexually oriented business.
- (e) A licensee shall immediately discontinue the massage therapy session, activity or the professional relationship when a client initiates any verbal or physical contact with the licensee that is intended to arouse or gratify the sexual desire of either person.

117.93. Advertising. *(New Section adopted effective November 1, 2017, 42 TexReg 4991)*

- (a) A person, including a massage therapy instructor, a massage school, a massage therapist, or massage establishment, who is not licensed under the Act, shall not use the word "massage" on any sign, display, or other form of advertising unless the person is expressly exempt from the license requirements of the Act. Under no circumstances may a sexually oriented business use the word "massage" or "bath" on any sign or other form of advertising.
- (b) A licensee shall not use advertising that is false, misleading, or deceptive or that is not readily subject to verification. False, misleading, or deceptive advertising or advertising that is not readily subject to verification includes advertising that:

- (1) makes a material misrepresentation of fact or omits a fact necessary to make the statement as a whole not materially misleading;
 - (2) makes a representation likely to create an unjustified expectation about the results of a health care service or procedure;
 - (3) compares a health care professional's services with another health care professional's services unless the comparison can be factually substantiated;
 - (4) contains a testimonial;
 - (5) causes confusion or misunderstanding as to the credentials, education, or licensure of a health care professional;
 - (6) advertises or represents that health care insurance deductibles or copayments may be waived or are not applicable to health care services to be provided if the deductibles or copayments are required;
 - (7) advertises or represents that the benefits of a health benefit plan will be accepted as full payment when deductibles or copayments are required;
 - (8) makes a representation that is designed to take advantage of the fears or emotions of a particularly susceptible type of client; or
 - (9) advertises or represents in the use of a professional name, title or professional identification that is expressly or commonly reserved to or used by another profession or professional.
- (c) When an assumed name is used in a person's practice as a massage therapist, the full legal name of the massage therapist or license number of the massage therapist must be listed in each advertisement and each time the business name or assumed name appears in writing. The license number of a massage establishment must be listed in conjunction with the assumed or legal name of the massage establishment. An assumed name used by a massage therapist must not be false, misleading, or deceptive.
 - (d) A massage school shall not make false, misleading, or deceptive statements concerning the activities or programs of another massage school.
 - (e) Advertisements by a massage therapy educational program seeking prospective students must clearly indicate that training is being offered, and shall not, either by actual statement, omission, or intimation, imply that prospective employees are being sought.
 - (f) Advertisements seeking prospective students must include the full and correct name and license number of the massage therapy educational program and massage school.

SUBCHAPTER I. FEES

117.100.Fees. *(New Section adopted effective November 1, 2017, 42 TexReg 4991)*

- (a) All fees paid to the department are non-refundable.
- (b) Fees related to massage therapists are as follows:
 - (1) initial application fee--\$100;
 - (2) renewal application fee (for two-year license)--\$75.
- (c) Fees related to massage establishments are as follows:

- (1) initial application fee:
 - (A) for each massage school primary instructional location or approved additional location--\$100;
 - (B) for all other establishment applicants--\$200;
- (2) renewal application fee (for two-year license):
 - (A) for each massage school primary instructional location or approved additional location--\$100;
 - (B) for all other establishment renewal applicants--\$200.
- (d) Fees related to massage schools offering the massage therapy educational program are as follows:
 - (1) initial application fee (includes inspection)--\$1,500;
 - (2) renewal application fee (for a two-year period)--\$1,000;
 - (3) change of instructional address for main campus (includes inspections)--\$300;
 - (4) application fee for an additional massage school location separate from the main campus (includes inspection) --\$500; and
 - (5) renewal fee for an additional massage school location separate from the main campus--\$500.
- (e) Fees related to massage therapy instructors are as follows:
 - (1) initial application fee--\$100;
 - (2) renewal application fee (for a two-year period)--\$100;
- (f) The fees related to approved providers for continuing education are as follows:
 - (1) initial application fee--\$200;
 - (2) renewal application fee (for a two-year period)--\$200.
- (g) A duplicate/replacement fee for licenses issued under this chapter is \$25.
- (h) The fee for a criminal history evaluation letter is the fee prescribed under §60.42 of this title (relating to Criminal History Evaluation Letters).
- (i) A dishonored/returned check or payment fee is the fee prescribed under §60.82 of this title (relating to Dishonored Payment Device).
- (j) Late renewal fees for licenses issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

SUBCHAPTER J. ENFORCEMENT PROVISIONS

117.110. Complaints. *(New Section adopted effective November 1, 2017, 42 TexReg 4991)*

- (a) Any person may file a complaint with the department alleging that a massage therapist, massage school,

massage therapy instructor, massage establishment, continuing education provider, or another person or business has violated the Act or this chapter.

- (b) A person wishing to file a complaint against a massage therapist, massage school, massage therapy instructor, massage establishment, continuing education provider, or another person or business shall notify the department at Texas Department of Licensing and Regulation, Massage Therapy Program, P.O. Box 12157, Austin, Texas 78711, (512) 539-5600, or www.tdlr.texas.gov.

117.111. Administrative Penalties and Sanctions. *(New Section adopted effective November 1, 2017, 42 TexReg 4991)*

- (a) If a person or entity violates any provision of Texas Occupations Code, Chapters 51 or 455, this chapter, or any rule or order of the executive director or commission, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both in accordance with the provisions of Texas Occupations Code, Chapters 51 and 455 and any associated rules.
- (b) The commission or executive director may refuse to issue a license to a person, suspend or revoke the license of a person, or place a person licensed under the Act on probation if the person:
 - (1) obtains a license by fraud, misrepresentation, or concealment of material facts;
 - (2) sells, barter, or offers to sell or barter a license;
 - (3) violates a rule adopted by the commission;
 - (4) engages in unprofessional conduct that endangers or is likely to endanger the health, welfare, or safety of the public;
 - (5) violates an order or ordinance adopted by a political subdivision under Local Government Code, Chapter 243; or
 - (6) violates this chapter.
- (c) The commission or executive director shall revoke the license of a person if:
 - (1) the person is convicted of, enters a plea of nolo contendere or guilty to, or receives deferred adjudication for an offense involving prostitution or another sexual offense; or
 - (2) the department determines the person has practiced or administered massage therapy at or for a sexually oriented business.
- (d) The commission or executive director shall revoke the license of a person licensed as a massage school or massage establishment if the department determines that:
 - (1) the school or establishment is a sexually oriented business; or
 - (2) an offense involving prostitution or another sexual offense that resulted in a conviction for the offense, a plea of nolo contendere or guilty to the offense, or a grant of deferred adjudication for the offense occurred on the premises of the school or establishment.

117.112. Enforcement Authority. *(New Section adopted effective November 1, 2017, 42 TexReg 4991)*

The enforcement authority granted under Texas Occupations Code, Chapters 51 and 455 and any associated rules may be used to enforce Texas Occupations Code, Chapter 455 and this chapter.